

# CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 367

December 5, 1973

## CORPORATION INCOME: RECEIPTS FROM SALES OF ADVERTISING SPACE

### Syllabus:

Advice has been requested regarding the inclusion of advertising revenue in the sales factor of the apportionment formula under the Uniform Division of Income for Tax Purposes Act (UDITPA) for publishers of magazines and periodicals.

Receipts from the sales of magazines and periodicals and advertising space in such magazines and periodicals by publishers gives rise to income from transactions and activity in the regular course of the taxpayers' trade or business constituting "business income" under Section 25120(a), Bank and Corporation Tax Law. Gross receipts from those transactions constitute "sales" as defined in Section 25120(e) which are required to be included in the sales factor (Section 25134) of the apportionment formula under UDITPA.

Tangible property is that which is visible and corporeal, having substance and body. Roth Drug, Inc. v. Johnson, 13 Cal.App.2d 720, 734 (1936). It is evident that a magazine or periodical has substance and body. Consequently, the sale of magazines and periodicals by the publisher to subscribers and newsstands are sales of tangible personal property. (cf. Time, Inc. v. Hulman, 201 N.E. 2d 374, 377, 31 Ill.2d 344.) Receipts from such sales are to be included in the sales factor in accordance with Section 25135 governing sales of tangible personal property.

The sale of advertising space in such magazines and periodicals is closely connected with the sale of the publication. The primary purpose of the advertiser is to reach the market provided by the publisher. The publisher in turn guarantees a particular circulation volume, or in other words, a market. Since advertising included in magazines and periodicals is inextricably connected with the sale of those publications, it is concluded that advertising receipts are to be included in the numerator of the sales factor based upon the ratio which sales of magazines and periodicals in this state bears to the total sales of magazines and periodicals everywhere.